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No. 00-1322

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IN THE SUPREME COURT OF THE UNITED STATES

JEANNE WOODFORD, Warden of the State Prison
at San Quentin,

Petitioner,

vs.

BRUCE WAYNE MORRIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

~~REPLY~~ TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION AND PROCEDURAL BACKGROUND

This capital habeas case involves a thoroughly unremarkable issue: whether Respondent Morris is entitled to an evidentiary hearing on his claim that trial counsel was ineffective at both stages of his capital trial, and on his claim that he was incompetent to aid and assist his attorneys during his trial. Petitioner's main claim is that Morris received $100,000 in investigative funds from the federal court to in order to ferret out the factual bases for his claims. As we will demonstrate below, this allegation amounts to both a factual and legal misstatement.

Respondent Morris was convicted of the robbery/murder of Ricky Van Zandt in San Joaquin County, California in 1985. He was represented by appointed counsel in his automatic appeal to the California Supreme Court. During the time that Morris's case was pending in the California Supreme Court, that court issued a press release in which it announced purported to establish new rules for filing habeas corpus petitions in

conjunction with capital appeals. State appellate counsel (not federally appointed counsel) sought funds from the state court in order to investigate potential habeas corpus claims. The state court gave state appellate counsel just $1,450.00 with which to conduct his investigation, and denied the remainder of his request. Appellate counsel filed a Petition for Writ of Habeas Corpus[1], but it was denied before oral argument was held on the capital appeal. The California Supreme Court upheld Morris's convictions and death sentence.[2]

New counsel was appointed to represent Morris in August, 1992. A first federal petition was filed on June 15, 1993. On December 6, 1993, the district court entered an order holding the federal petition in abeyance while Morris returned to state court to exhaust new claims.

After Morris had reached federal court, the California Supreme Court issued its decision in *In re Clark*[3]. The *Clark* decision established, through decisional authority, the new requirements for filing first habeas corpus petitions contemporaneously with a pending automatic appeal of a death sentence.

Morris sought funds from the state supreme court in order to investigate and present evidence in support of a second state habeas petition. The state court denied the request in its entirety. Nevertheless, Morris filed a second state petition, in which he

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[1] The first state petition did not contain a claim of trial attorney ineffectiveness.

[2] *People v. Morris*, 53 Cal.3d 152 (1991).

[3] 5 Cal.4th 750 (1993).

made detailed factual allegations concerning trial counsels' failures to investigate matters related to the culpability of his co-defendants, the victim's prior history of assaultive behavior and alcohol related convictions, Morris' mental impairments and how they related to his false confession in this case, and the failure to investigate and present mitigating mental impairment evidence at both phases of his trial. Detailed allegations were also made concerning Morris's inability to rationally aid and assist trial counsel.[4]

The state court denied the petition on the merits and procedurally defaulted the petition with a citation to *Clark*.[5]

An amended habeas petition was filed when Morris returned to federal court, which included the defaulted attorney ineffectiveness and incompetence to aid and assist claims. The magistrate-judge recommended that penalty phase relief be granted, based on a constitutionally faulty sentencing instruction. The district court denied habeas relief on this claim, however.[6]

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[4] See Petitioner's Appendices to Petition for Writ of Certiorari, at 255-63. (Hereafter Pet's App.).

[5] Pet's App at 294.

[6] Morris's sentencing jury received a written instruction which contained a typographical error of constitutional magnitude. The instruction told the jurors that if they had a reasonable doubt about whether to impose a sentence of death or life without parole, they should give the defendant the benefit of the doubt and sentence him to life **with** parole. The jury announced itself hung, and asked the trial judge to explain this specific instruction to them. No party to the trial took the time to examine the written instructions. The judge simply told the jurors that "the instruction speaks for itself" and told them to continue deliberating. The jury returned a death sentence. Pet's App, at 13-19. The Ninth Circuit chose to hold in abeyance its ruling on this claim pending the outcome of the evidentiary hearing on remand. Pet's App, at 10.

The magistrate-judge recommended and the district court judge found that the attorney-ineffectiveness and incompetence to aid and assist claims were procedurally barred.[7]

The Ninth Circuit held that the procedural bar entered by the state supreme court was invalid.[8]

I

THE NINTH CIRCUIT'S DECISION THAT MORRIS IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS ATTORNEY INEFFECTIVENESS AND CLIENT INCOMPETENCE CLAIMS IS UNREMARKABLE, AND THEREFORE NOT WORTHY OF REVIEW, IN ALL RESPECTS.

Petitioner asks this Court to review a case that presents no novel interpretation of law, no previously untraveled legal ground. Petitioner's complaint is purely and simply that a death sentenced inmate has been granted an evidentiary hearing, and Petitioner objects to that decision. Moreover, Petitioner's arguments in favor of a grant of certiorari fly in the face of recent decisions announced by this Court. Consequently, there is nothing cert-worthy about this case.

When Morris returned to state court and raised the attorney-ineffectiveness and client incompetence claims[9], he specifically requested an evidentiary hearing in that court

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[7] See Pet's App, at 19-20, and 27-47.

[8] *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000).

[9] See Pet's App, at 255-63, for detailed allegations contained in state habeas petition concerning attorney ineffectiveness and client incompetence to aid and assist counsel.

to prove the particulars of his claims.[10] The state court denied Morris this opportunity when it improperly procedurally defaulted his claims.

Perhaps most important, this petition is based on a completely false factual foundation. Petitioner has repeatedly asserted throughout the Petition for Certiorari that Morris's federally appointed counsel received nearly $100,000 "in investigative funds" in connection with this case.[11] Petitioner's argument is that, since Morris received $100,000 for investigation, he should have disclosed the evidence he uncovered as a result of that investigation in order to obtain evidentiary hearings in state and federal court. **No funds were provided to Morris's attorney in order to hire investigators or experts, or any secondary assistance in this case, pursuant to 21 U.S.C. section 848(q)9.** Petitioner has misquoted and distorted a sentence contained in the magistrate-judge's findings and recommendations concerning procedural default. The court stated:

Although this court discouraged full funding of expert investigation fees at the time, counsel were given $93,725.00 in attorney's fees for purposes of investigation and preparation of the initial petition.." Pet's App, at 42.

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[10] See Pet's App, at 267, paragraph 3.

[11] Petition for Certiorari, at 4: "The district court pointed out that Morris investigated his claims for nearly one and one-half years along with 'approximately $100,000' in investigative fees."

Petition for Certiorari, at 9: "Morris's receipt of nearly $100,000 in investigative funds highlights the problem with the Ninth Circuit's newly minted standard."

Petition for Certiorari, at 14: "Yet, the court did not account for the indisputable fact that Morris had received approximately $100,000 to investigate and prepare a state and federal petition.."

Petition for Certiorari, at 15: "Morris and his counsel received approximately $100,000 to research and identify claims."

The funds provided to Morris's attorneys were dispensed as attorney's fees, not as funds to hire experts and investigators. These funds are authorized under two separate sections of 21 U.S.C. section 848q. Petitioner's numerous and misleading statements that Morris was given investigative and expert funding in connection with his federal petition alone require that this Court decline to review this case.

Moreover, the state supreme court also refused to fund any investigation in connection with the filing of the second state habeas petition.[12] Importantly, this Court's recent decision in *Williams v. Taylor*[13] undermines the position advanced by Petitioner. *Williams* found that the failure of the state court to fund investigation into ultimately defaulted claims precluded further investigation into those claims by Williams' counsel.[14]

The crux of the events in this case is that the state supreme court improperly defaulted Morris when he filed his second state petition. The California Supreme Court retroactively applied a procedural bar to Morris's petition which did not exist when Morris filed his first petition, in violation of *Ford v. Georgia*.[15] The state court also entered a denial on the merits of the claims contained in the state habeas petition. Thus,

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[12] Pet's App, at 42, acknowledging that state court gave only $1,450 for investigation – but these funds were in connection with first habeas petition, not the second.

[13] 529 U.S. 420 (2000).

[14] *Williams*, 420 U.S. at 442-43. Additionally, *Williams* is an AEDPA case. The instant case pre-dates the existence of the AEDPA. *Morris v. Woodford*, 229 F.3d at 778.

[15] 498 U.S. 411 (1991), holding that the retroactive application of a procedural bar which did not previously exist and of which the petitioner had no notice, is unconstitutional.

the failure the state court found was based purely on timeliness, not on some other legal basis. Consequently, Petitioner's claim that this Court should review some matter related to the underlying facts presented to the state court, or how he sought review in state court, is not even ripe for review in the context of these proceedings.

The amended federal petition contained detailed factual allegations, which tracked the language of the second state habeas petition, concerning trial counsels' failures to investigate both guilt and penalty phase defenses, and Morris's inability to aid and assist counsel at trial. The allegations are not patently unbelievable, frivolous or false; therefore, the district court was required to assume the truth of the allegations in determining whether summary judgment was appropriate and an evidentiary hearing required.[16]

The Ninth Circuit's remand for an evidentiary hearing in this case is completely consistent with the decisions of this Court. Both *Keeney v. Tamayo-Reyes*[17] and *Williams v. Taylor* recognize that a federal evidentiary hearing is necessary where the habeas petitioner was wrongly denied such a hearing, or was unable to obtain such fact development, in state court. Morris was wrongly denied a hearing in state court due to the improper procedural default order. The Ninth Circuit specifically mentioned *Keeney* when it held that Morris was entitled to an evidentiary hearing[18]. The court below

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[16] *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977).

[17] 504 U.S. 1 (1992).

[18] 229 F.3d at 781.

recognized that the state deprived Morris of the ability to develop the facts underlying his claims when it refused him a hearing into these matters based on the erroneous default finding.[19]

In sum, the legal justifications advanced by Petitioner in support of his Petition for Certiorari are not supported by the record developed in the state court proceedings. Factual assertions Petitioner made concerning the funding provided in this case are false. Most importantly, the decision of the Ninth Circuit in finding that Morris is entitled to an evidentiary hearing on his claims of attorney ineffectiveness and incompetence to aid and assist counsel are completely consistent with well established and unremarkable precedent. Accordingly, this Court should deny the Petition for Writ of Certiorari.

DATED: May 4th, 2001

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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[19] Petitioner misstates what is ripe for review in this Court when it states: "The Ninth Circuit remand signals that habeas petitioners may withhold evidence at the pleading stage in the state forum and still get an evidentiary hearing in federal court after the state has properly denied a hearing in state court." Petition, at 10. The state court order denying the second state petition said nothing about a lack of evidentiary support for the claims in the petition. The order was first of all based on a finding of lack of timeliness. The order went on to deny the petition *on the merits*. The state court order does not provide a legal or factual basis for the arguments advanced here by Petitioner.

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I hereby certify that three copies each of the foregoing Reply to Petition for Writ of Certiorari and Motion to Proceed *In Forma Pauperis* have been forwarded to Counsel for Petitioner, WARD CAMPBELL, Deputy Attorney General, 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, via regular US Mail this 4th day of May, 2001. All persons required to be served have been so served.

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